19 **S.B. CIVIL SECOND APPEAL NO.272/2006.**
Smt. Dharmi Bai Vs. Pramod Kumar

Date of Order :: 7th August 2007.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Sampat Raj Sharma, for the appellant.

BY THE COURT:

Apart that the memorandum of this second appeal does not state any substantial question of law, after examining the record of the case, this Court is satisfied that this second appeal even otherwise does not involve any question of law and least any substantial question of law.

In the suit for eviction and recovery of arrears of rent as filed by the plaintiff-respondent, the defendant-appellant raised objection regarding locus of the plaintiff to maintain the suit while denying his ownership of the suit house and while denying existence of relationship of landlord and tenant between the parties. The defendant-appellant further asserted that she has never made payment of rent to the plaintiff. The plaintiff has relied upon a rent-note dated 07.06.1983 (Ex.1) to which the defendant asserted that her thumb impressions were obtained on the blank papers in the garb of taking measurements and under coercion; and she had lodged a report in that relation at Police Station, Bali and consequent thereto, cognizance was taken and the case was tried and copy of decision thereof shall be filed as

soon as received. The defendant-appellant also alleged that the suit house was bequeathed to her by its owner Smt. Badami Bai in the year 1980 and thus, she was in its possession as owner.

The learned trial court framed relevant issues and after taking evidence led by the parties held that the plaintiff has been able to establish relationship of landlord and tenant between the parties particularly on the basis of the rent-note dated 07.06.1983 (Ex.1); and disbelieved the case of the defendant-appellant that her thumb impressions were obtained forcibly or under misrepresentation. The learned trial court found that the FIR referred to by the defendant was lodged by her son and even the said criminal proceedings ultimately terminated in favour of the plaintiff. The learned trial court also found that the premises were situated in the village area, Sewadi, where the provisions of the Rent Control Act did not apply and the tenancy was terminated by a valid notice, and hence held that the plaintiff was entitled to recover possession. The learned trial court rejected the case of the defendant about her adverse possession and so also of a Will having been made in her favour, after considering the material as produced on record, and after noticing that relevant evidence was omitted to be produced on record.

The learned appellate court has proceeded to decide the appeal in meticulous details issuewise; and has affirmed the

judgment and decree passed by the learned trial court after thorough consideration of the entire record. Apart from endorsing the findings of the learned trial court, the appellate court additionally referred to the copy of FIR (Ex.A/1) filed by the defendant herself in appeal under Order 41 Rule 27 CPC and noticed its contents wherein son of the defendant-appellant admitted that they were residing as tenants in the house of Badami Bai wife of Kapoor Chand for the last 21 years and were paying rent at the rate of Rs.7/- per month; that Badami Bai expired 2-3 years back and after her, the rent was being paid to her relative Meghraj; that on 07.06.2003 Babulal, Kiran Kumar, Pramod Kumar sons of Meghraj and Narsingh all residents of Sewadi entered the house and demanded from her mother (appellant) seven months' rent i.e. Rs.49/-; that her mother paid Rs.50/- and Pramod Kumar returned one rupee to her mother; that thereafter those persons forcibly obtained thumb impressions of her mother on stamp papers. The learned appellate court observed that from such assertions in the FIR, it was clear beyond doubt that the premises were on rent with the appellant at Rs.7/-per month; and a sum of Rs.49/- towards rent of seven months was paid even at the time of incident. The learned appellate court concluded that in view of such assertions made in the FIR regarding tenancy, there was no doubt about existence of relationship of landlord and tenant between the

plaintiff and the defendant.

Learned counsel appearing for the appellant-defendant has urged for consideration in this appeal that the plaintiff was not entitled to maintain the suit and his capacity qua the property in question has not been examined by the learned courts below. Learned counsel pointed out that the plaintiff alleged himself to be the landlord and did not file the suit with reference to any succession to the property but then came out with a different plea in evidence suggesting himself to be the adopted son of the owner of the property; and there has been fundamental variance in pleading and evidence. Learned counsel further contended that the case of adverse possession of the appellant has not been properly appreciated by the learned courts below and there being no relationship of landlord and tenant and no rent having been paid by the appellant to the plaintiff and she having established her uninterrupted possession for over 28 years, the suit ought to have been dismissed.

The submissions aforesaid essentially relating to the questions of fact, do not merit acceptance in this second appeal. So far the entitlement of the plaintiff is concerned, once it has been found on the basis of the rent-note Ex.1 that there existed a relationship of landlord and tenant between the parties, mere reference in evidence about his adoption by the original landlord is of no adverse effect on the rights of the plaintiff in this case.

Equally, the theory of adverse possession falls to the ground once it has been found that the appellant was a tenant of the plaintiff by virtue of the rent-note Ex.1.

It is noticed that in relation to the execution of rent-note, though the appellant-defendant attempted to raise objection and lodged criminal case but the same ultimately terminated in favour of the plaintiff. Moreover, from the contents of the FIR (Ex.A/1) produced and relied upon before the appellate court by the appellant herself, it is more than clear that the appellant had been in possession of suit house only as a tenant and has made payment of rent to the plaintiff even on the date of alleged incident. In an overall view of the matter, the defence taken by the appellant could only be rejected as hollow and baseless. With tenancy having been terminated under a valid notice, decree for ejectment remains unexceptionable.

Having examined the considerations adopted by the learned subordinate courts, this Court is satisfied that the matter stands concluded with concurrent findings of fact reached after proper appreciation of evidence; and calls for no interference in this second appeal.

The appeal fails and is, therefore, dismissed summarily.

(DINESH MAHESHWARI), J.

Mohan/